IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

WRIT PETITION NO. 7757 OF 2007

Pandurang Laxman Sargar & Ors..... .....Petitioners
V/s
Kisan Mahiba Kalel & Ors. ....Respondents.

WITH

WRIT PETITION NO. 7761 OF 2007

Sarjerao Mahadeo Waware & Ors..... ... Petitioners.
V/s
Popat Dada Jagdale & Ors.... ... Respondents.

WITH

WRIT PETITION NO. 7756 OF 2007

Navnath maruti Devkar & Ors.... ... .Petitioners.
V/s
Mahadeo Yashwant Devkar & Ors... ... Respondents.

WITH

WRIT PETITION NO. 7758 OF 2007

Bhanudas Bayaji Babar & Ors... ... Petitioners.
V/s
Arun Tatyaba Pol & Ors... ... Respondents.

WITH

WRIT PETITION NO. 7759 OF 2007

Mohan Waman Ingale & Ors..... ..... Petitioners.
V/s
Balaso Gulabrao Ingale..... .... Respondents.

WITH

WRIT PETITION NO. 7760 OF 2007

Gulabrao Baba Jagdale & Ors.... .... Petitioners.
V/s
Vilas Sarjerao Jagdale & Ors... ... Respondents.

Mr.Y.S.Jahagirdar, Sr. Adv. With Mr.Amit Borkar, Adv. For the petitioners.

Mr.A.Y.Sakhare, Sr.Adv. With Mr.P.A.Pol with Mr.A.M.Misal, Mr.Sharad Suryawanshi & Mr.Kale, Adv. For the respondent No.1.

Mr.S.R.Nargolkar, AGP for respondent Nos. 2 and 3.

CORAM: A.P.DESHPANDE, J.
22/10/07

PC:

Rule. Rule made returnable forthwith.

Taken up for final hearing by consent of parties.

An identical question of law and fact emerges for consideration in this batch of petitions and hence these petitions are heard together and are being disposed of by this common order.

2. An order under challenge in these petitions is the one passed by the Collector in exercise of powers under rule 5(2) of the Maharashtra Specified Cooperative Societies Elections Committees Rules, 1971 rejecting an application moved by the petitioners for change of name of the delegate. The name of the respondent No.1 was submitted by the society for inclusion in the list of voters of the federal society and the 1st respondent's name thus has been

included in the list. At a later point of time the present petitioners who claim to constitute majority members of the managing committee of the affiliated society purportedly passed a resolution seeking change in the name of the delegate and prayed before the Collector that the name of respondent No.1 be deleted.

3. The case of the petitioners is that the Chairman and the Secretary of the affiliated society did not accede to the request made by the petitioners for convening of a meeting for change of the name of the delegate and thus the petitioners/managing committee members moved the Assistant Registrar, Satara by a letter dated 24.9.07. The said authority was intimated that the majority of the members of the managing committee have moved the Secretary of the society so also the minority members of the managing committee by issuing notices by registered post and have convened the meeting on 4.10.07. Acting on the said letter the Assistant Registrar directed the Secretary to remain present with the proceedings to attend the said meeting. According to the petitioners as the Secretary did not remain present and as the office of the society was closed the petitioners conducted the meeting of the managing committee in front of the office of the society wherein a resolution was carried for change of the name of the delegate purportedly under rule 5(2) of the Rules. It is further the case of the petitioners that as the proceeding book and other documents were not available a new proceeding book was prepared and the resolution came to be recorded in the newly prepared proceeding book. Whereas case of the respondent is that

a definite procedure has been prescribed in bye-law No.43 for convening a meeting when the Chairman of the society avoids to convene the meeting despite request to that effect by majority of the managing committee members. bye-law No.43 if freely translated reads thus:

> "Notice of the meeting and its agenda shall be sent by the Secretary to the members of the Committee five days in advance. Such meeting shall be convened by the Secretary as directed by the Chairman. Inspite of request being made by majority of members of the committee if the Chairman avoids to convene the meeting as desired by the majority of members the Majority of members shall direct the Secretary to convene the meeting and such direction shall be binding on the Secretary."

Learned counsel for the respondent has submitted that the present petitioners did not follow the procedure laid down in the bye-laws and to be precise bye-law No.43 which obliges majority of members of managing committee to first request the Chairman for convening a meeting and if and in case the Chairman avoids to convene the meeting as desired by majority of the members of the Committee then such majority of members can issue a direction to the Secretary which direction shall be binding on the Secretary. Perusal of the record reveals that the petitioners did not request the Chairman of the society for convening the meeting nor did the petitioners direct the Secretary to convene a meeting on the ground that the Chairman, despite request made by the majority of

members of the committee has failed to convene a meeting. Thus the submission is that holding of a meeting by majority of members in the manner not recognized by bye-laws would not confer the status on the meeting as validly convened and in turn even the resolution cannot be said to be validly passed resolution. Reliance is placed on section 73(1) which lays down -----

> "73.**Committee, its powers and functions.--**(1)The management of every society shall vest in a committee, constituted in accordance with this Act, the rules and bye-laws which shall exercise such powers and perform such duties as may be conferred or imposed respectively by this Act, the rules and the bye-laws."

The Collector in the above set of facts has recorded the finding that as the meeting was not convened and as the business therein was not transacted as is mandated by bye-law No.43 of the bye-laws, the change as desired in the name of the delegate under rule 5(2) cannot be granted. It is this finding of the Collector which is assailed in the present writ petition. Other objection is also raised by the respondent to the maintainability of the writ petition on the ground of non-joinder of Society as a party. Reliance is placed on a judgment of learned single judge of this Court to substantiate the said contention in the case of ***Maheshkumar Vinayak Bhumkar*** v/s ***Shanti Landmark***, 1998 (1) LJ 45 delivered by Justice D.K. Deshmukh. Lastly it is contended by the respondents that the election process has already commenced and today is the last day for publication of the list of validly nominated candidates and thus

no interference at this stage is called for. It is also contended that adjudication of `validity of meeting' falls outside the authority and jurisdiction of Collector and the same is in realm of section 91 of the Maharashtra Cooperative Societies Act. I do not propose to adjudicate all the questions that are raised in these petitions as I do not propose to interfere at this stage when most of the stages in election process are already over and the election is under way in its final stages. Perused the order passed by the Collector. The Collector has held that the meeting convened by the present petitioners/majority of members of the managing committee cannot be said to be validly convened meeting and the business transacted cannot be termed as validly transacted business. Thus the conclusion is reached by the Collector that the resolution passed by the petitioners seeking change in the name of the delegate not being in conformity with bye-law No.43 read with rule 5(2) of the Rules cannot be acted upon. I do not think that the Collector has committed any patent illegality warranting interference in exercise of writ jurisdiction that too at this stage of the election and hence I decline to exercise discretion in favour of the petitioners and proceed to dismiss the writ petitions summarily. It is made clear that it shall be open for the petitioners to file appropriate election petition after declaration of results of the elections if permissible in law. Writ petitions are thus summarily dismissed.

22.10.07